

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

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UNITED STATES OF AMERICA, )  
PLAINTIFF. ) CASE NO. 13CR3575-DMS  
)  
) SAN DIEGO, CALIFORNIA  
) WEDNESDAY, MARCH 21, 2018  
SERAFIN ZAMBADA-ORTIZ, ) 9:30 A.M. CALENDAR  
DEFENDANT. )  
\_\_\_\_\_)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARING

COUNSEL APPEARING:

FOR PLAINTIFF:

ADAM L. BRAVERMAN,  
INTERIM UNITED STATES ATTORNEY  
BY: MATTHEW JAMES SUTTON  
ASSISTANT U.S. ATTORNEY  
880 FRONT STREET  
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT:

SAJI VETTIYIL, ESQ.  
ROBERT MONTIEL, ESQ.  
571 NORTH GRAND AVENUE  
NOGALES, ARIZONA 85621

MICHAEL MCDONNELL, ESQ.  
418 EAST LA HABRA BOULEVARD  
LA HABRA, CALIFORNIA 90631

INTERPRETER:

LETTY LEWIS

REPORTED BY:

LEE ANN PENCE  
OFFICIAL COURT REPORTER  
UNITED STATES COURTHOUSE  
333 WEST BROADWAY ROOM 1393  
SAN DIEGO, CALIFORNIA 92101

1 **SAN DIEGO, CALIFORNIA - WEDNESDAY, MARCH 21, 2018 - 9:30 A.M.**

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3 **THE CLERK:** NO. 1 ON CALENDAR, CASE NO. 13CR3575,  
4 UNITED STATES OF AMERICA VERSUS SERAFIN ZAMBADA-ORTIZ; ON FOR  
5 SENTENCE WITH PROBATION OFFICE REPORT.

6 **MR. SUTTON:** GOOD MORNING, YOUR HONOR. MATTHEW  
7 SUTTON ON BEHALF OF THE UNITED STATES.

8 **THE COURT:** GOOD MORNING.

9 GOOD MORNING.

10 MR. ZAMBADA-ORTIZ IS PRESENT, BEING ASSISTED.

11 **MR. VETTIYIL:** GOOD MORNING, JUDGE.

12 **THE COURT:** GOOD MORNING.

13 YOU HAVE REVIEWED THE PRESENTENCE REPORT WITH YOUR  
14 CLIENT?

15 **MR. VETTIYIL:** YES, I HAVE, JUDGE.

16 **THE COURT:** I HAVE REVIEWED THE P.S.R., GOVERNMENT  
17 SENTENCING SUMMARY CHART AND SENTENCING MEMORANDUM,  
18 DEFENDANT'S SENTENCING MEMORANDA, EXHIBITS. ALL OF THE  
19 LETTERS, THERE WERE ABOUT 60 OF THEM, AND THE OTHER  
20 DOCUMENTATION SUBMITTED ALONG WITH THE DEFENDANT'S SENTENCING  
21 MEMORANDUM. I HAVE CONSIDERED CAREFULLY ALL OF THE PARTIES'  
22 SUBMISSIONS.

23 IT IS AN UNUSUAL CASE WITH A JOINT RECOMMENDATION AT  
24 66 MONTHS. AND I HAVE JUST A COUPLE OF CLARIFYING QUESTIONS  
25 BEFORE I PROVIDE A TENTATIVE.

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1                   FIRST, THE BASE OFFENSE LEVEL IN THE PLEA AGREEMENT  
2 IS SET OUT AT A LEVEL 36. THE P.S.R. IDENTIFIES A BASE  
3 OFFENSE LEVEL OF 34, GIVEN THE PLEA TO A CONSPIRACY TO  
4 DISTRIBUTE OVER 100 KILOGRAMS OF COCAINE AND 1,000 KILOGRAMS  
5 OF MARIJUANA.

6                   AND IT IS MY UNDERSTANDING THAT THE PARTIES REACHED  
7 A BASE OFFENSE LEVEL 36 BASED IN PART ON THE FACT THAT THE  
8 LOAD THAT IS THE SUBJECT OF THE CONSPIRACY OR THE INTERCEPTED  
9 CALL CONTAINED NOT ONLY COCAINE BUT METHAMPHETAMINE. THE  
10 METHAMPHETAMINE IS ATTRIBUTED TO THE CO-CONSPIRATOR, NOT SO  
11 MUCH SO FOR MR. ZAMBADA-ORTIZ.

12                  **MR. SUTTON:** THAT'S CORRECT, YOUR HONOR.

13                  **MR. VETTIYIL:** THAT IS CORRECT, JUDGE.

14                  **THE COURT:** SO IN LIGHT OF THAT THE PLEA AGREEMENT,  
15 I THINK ON A PRINCIPLED BASIS, ASSIGNS A BASE OFFENSE LEVEL OF  
16 36 RATHER THAN 34.

17                  THE PLEA AGREEMENT ASSIGNS A PLUS 2 FOR AGGRAVATED  
18 ROLE. AND IT IS MY UNDERSTANDING, BASED ON THE SUBMISSION,  
19 THAT THE PARTIES REACHED THAT DETERMINATION BASED ON  
20 MR. ZAMBADA-ORTIZ'S INVOLVEMENT IN THE CONSPIRACY FOR A  
21 RELATIVELY CONFINED PERIOD OF TIME, TWO TO THREE YEARS, AND  
22 FOR A RELATIVELY DISCRETE AREA OF INVOLVEMENT, THAT IS AS THE  
23 LEADER OR ORGANIZER OF A DISTRIBUTION CELL.

24                  **MR. SUTTON:** THAT IS CORRECT, YOUR HONOR.

25                  **THE COURT:** SO IN LIGHT OF THAT THE TENTATIVE WOULD

1 BE TO FOLLOW THE PLEA AGREEMENT, INCLUDING THE GUIDELINE  
2 CALCULATIONS SET OUT THEREIN. TO FURTHER FOLLOW THE  
3 RECOMMENDATION OF THE PARTIES WITH RESPECT TO DEPARTURES AND  
4 VARIANCES. AND TO SENTENCE WITHIN THE RECAST GUIDELINE RANGE,  
5 WHICH IS 63 TO 78 MONTHS, AND TO SENTENCE AT 66 MONTHS.

6 COUNSEL.

7 **MR. VETTIYIL:** JUDGE, WITH THAT SAID, ALL I CAN SAY  
8 TODAY, ON BEHALF OF MY CLIENT, IS HE IS EXTREMELY REMORSEFUL  
9 AS TO WHAT HE DID. HE JUST WANTS TO PUT HIS PAST BEHIND AND  
10 TRY TO RAISE HIS TWO CHILDREN AS A SINGLE MAN. THAT IS WHAT  
11 HE WANTS TO DO, JUDGE.

12 AND HE APOLOGIZES TO THE COURT AND THE COMMUNITY, AS  
13 WELL AS TO HIS FAMILY, FOR THE CONDUCT HE DID.

14 THAT'S ALL I HAVE TO ADD, JUDGE.

15 I ALSO SUBMIT AS TO MY PLEADINGS.

16 **THE COURT:** YES. THANK YOU.

17 SIR, DO YOU WISH TO SAY ANYTHING AT THIS TIME?

18 **DEFENDANT ZAMBADA-ORTIZ:** (THROUGH INTERPRETER LETTY  
19 LEWIS) OF COURSE I DO.

20 I APOLOGIZE TO THE SOCIETY AND TO MY FAMILY FOR WHAT  
21 I HAVE DONE. I AM VERY SORRY. I WANT TO MOVE FORWARD SO I  
22 CAN BE THERE WITH MY CHILDREN AND RAISE THEM IN THE BEST  
23 MANNER POSSIBLE.

24 THANK YOU VERY MUCH.

25 **THE COURT:** THANK YOU. I APPRECIATE YOUR COMMENTS.

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1 MR. SUTTON.

2 **MR. SUTTON:** YOUR HONOR, THE UNITED STATES WOULD  
3 SUBMIT ON ITS PLEADINGS, UNLESS THE COURT HAS ANY ADDITIONAL  
4 QUESTIONS FOR THE UNITED STATES.

5 **THE COURT:** ALL RIGHT. I DO NOT.

6 I APPRECIATE ALL OF THE BRIEFING THAT WAS SUBMITTED.  
7 IT IS VOLUMINOUS, AND IT CONTAINS A GREAT DEAL OF INFORMATION  
8 THAT IS HELPFUL TO THE COURT IN ARRIVING AT A JUST AND FAIR  
9 SENTENCE.

10 I WOULD START WITH A GUIDELINE CALCULATION. FOR THE  
11 REASONS I SET OUT AT THE INCEPTION OF THIS HEARING I WOULD  
12 FIND THAT THE BASE OFFENSE LEVEL AT 36 IS THE APPROPRIATE BASE  
13 OFFENSE LEVEL UNDER SECTION 2D1.1 GIVEN OVER 100 KILOS OF  
14 COCAINE AND OVER 1,000 KILOGRAMS OF MARIJUANA. THAT IS THE  
15 SCOPE OF THE CONSPIRACY.

16 THERE IS AN UPWARD ADJUSTMENT OF TWO LEVELS UNDER  
17 SECTION 3B1.1C GIVEN THE AGGRAVATED ROLE, THAT IS AS A LEADER  
18 OR AN ORGANIZER OF A DISTRIBUTION CELL. THERE IS A DOWNWARD  
19 ADJUSTMENT OF THREE LEVELS FOR ACCEPTANCE OF RESPONSIBILITY  
20 WITH THE GOVERNMENT'S MOTION. THE ADJUSTED OFFENSE LEVEL  
21 BECOMES 35. THE GUIDELINE RANGE, WITH A CRIMINAL HISTORY  
22 CATEGORY I, SCORE ZERO, WOULD BE 168 TO 210 MONTHS.

23 THE PARTIES ARE ADVANCING A NINE-LEVEL DOWNWARD  
24 DEPARTURE UNDER 5K AND OTHER SENTENCING DEPARTURES, INCLUDE  
25 5K2.0 AS WELL AS VARIANCES UNDER 3553, WHICH I WILL ADDRESS IN

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1 A MOMENT. THAT NINE-LEVEL DEPARTURE OR VARIANCE I WOULD FIND  
2 TO BE REASONABLE. I WOULD FIND THAT ALL THE CRITERIA OF 5K  
3 ARE MET AND WARRANTED.

4 THAT THEN PROVIDES A TOTAL ADJUSTED OFFENSE LEVEL OF  
5 26, WITH A CRIMINAL HISTORY CATEGORY OF I THE GUIDELINE RANGE  
6 IS 63 TO 78 MONTHS. OBVIOUSLY A VERY FAVORABLE GUIDELINE  
7 RANGE, COMING DOWN FROM AN OTHERWISE LOW END OF 168 MONTHS.

8 THERE IS ALSO A TEN-YEAR MINIMUM MANDATORY THAT WAS  
9 TRIGGERED, AND SO THE JOINT RECOMMENDATION HERE IS OBVIOUSLY A  
10 VERY FAVORABLE ONE TO YOU. AND I AM PREPARED TO FOLLOW THAT  
11 PLEA AGREEMENT, AND I WILL ADDRESS SOME OF THE SPECIFICS UNDER  
12 3553.

13 THE NATURE AND THE CIRCUMSTANCES OF THE CRIME. THEY  
14 ARE VERY SIGNIFICANT. YOU PLED GUILTY TO A CONSPIRACY TO  
15 DISTRIBUTE COCAINE AND MARIJUANA. THE PLEA AGREEMENT IS  
16 CABINED OR LIMITED TO A DISCRETE PERIOD OF TIME, AND  
17 APPROPRIATELY SO BECAUSE YOU WERE PICKED UP ON INTERCEPTED  
18 WIRES IN MAY OF 2013 AND ARRESTED IN NOVEMBER OF 2013. YOUR  
19 ROLE IN THE CONSPIRACY, FROM THE GOVERNMENT'S PERSPECTIVE FROM  
20 THE EVIDENCE THEY HAVE, IS RELATIVELY CONFINED TO A TWO OR  
21 THREE-YEAR PERIOD OF TIME. AND THAT IS THE FOCUS OF THE PLEA  
22 AGREEMENT.

23 THE LOAD VEHICLE IN QUESTION THAT WAS INTERCEPTED AT  
24 THE PORT OF ENTRY CONTAINED 5.9 KILOGRAMS OF COCAINE, 18  
25 KILOGRAMS OF METHAMPHETAMINE. BUT IT IS APPARENT THAT THE

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1 CONSPIRACY AND THE DISTRIBUTION CELL THAT YOU WERE RUNNING WAS  
2 FOCUSED ON THE COCAINE, AND A SEPARATE CONSPIRACY WITH A  
3 SEPARATE CO-CONSPIRATOR INVOLVING DISTRIBUTION OF MARIJUANA,  
4 SIGNIFICANT QUANTITIES. THE CONSPIRACY INCLUDES DISTRIBUTION,  
5 BRINGING OR IMPORTING THESE DRUGS FROM MEXICO INTO THE UNITED  
6 STATES; INTO SAN DIEGO AND LOS ANGELES, SPECIFICALLY.

7 SO THE CRIME IS SIGNIFICANT, OBVIOUSLY, DESERVING OF  
8 SIGNIFICANT PUNISHMENT, AND APPROPRIATELY TRIGGERING A  
9 TEN-YEAR MINIMUM MANDATORY.

10 AS TO THE HISTORY AND CHARACTERISTICS ATTRIBUTED TO  
11 YOU, YOU WERE VERY YOUNG AT THE TIME OF YOUR ARREST, JUST 23  
12 YEARS OF AGE. THERE IS NO QUESTION THAT YOU HAD A REMARKABLE  
13 CHILDHOOD, AND YOU HAVE DESCRIBED IT WELL IN THE LETTERS THAT  
14 YOU HAVE SUBMITTED TO THE COURT ABOUT ESSENTIALLY BEING RAISED  
15 IN A GOLDEN CAGE. YOU HAD A WORLD OF LUXURY AND ALL KINDS OF  
16 THINGS PROVIDED TO YOU, BUT NO REAL ABILITY TO ENJOY THOSE OR  
17 TO ENJOY LIFE BECAUSE YOU WERE IMMersed IN THIS WORLD OF DRUG  
18 TRAFFICKING.

19 YOUR CHILDHOOD IS REMARKABLE IN THE SENSE THAT YOU  
20 WERE MOVED FREQUENTLY. THE RECORD REVEALS YOU WERE IN  
21 CULIACAN UNTIL AGE 12, THEN OFF TO ARIZONA FOR TWO YEARS.  
22 THEN BACK TO CULIACAN FOR A YEAR, THEN BACK TO ARIZONA FOR A  
23 COUPLE YEARS, THEN BACK TO CULIACAN. AND THEN OFF TO CANADA  
24 FOR A PERIOD OF TIME, AND THEN A RETURN TO CULIACAN WHEN YOU  
25 WERE 19 OR 20 YEARS OF AGE. AND IT IS AT THAT POINT THAT YOU

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1 GOT INVOLVED IN THE TROUBLE, THE TROUBLE THAT LEADS YOU HERE  
2 TODAY.

3 BUT DURING YOUR CHILDHOOD THE EVENTS THAT YOU WERE  
4 SUBJECTED TO ARE UNIQUE IN THE VIOLENCE THAT YOU GREW UP  
5 AROUND, AND THAT YOU WERE THE SUBJECT OF, TARGETED THOSE NEAR  
6 AND DEAR TO YOU WHEN YOU WERE TWO YEARS OF AGE AND NINE YEARS  
7 OF AGE. A GREAT DEAL OF VIOLENCE THAT YOU WERE SUBJECTED TO,  
8 WHICH CAUSED YOU TO MOVE FROM PLACE TO PLACE OVER THE YEARS.

9 AND YOU ARE FORTUNATE THAT YOU HAD A MOTHER THAT WAS  
10 SO DEDICATED TO YOU, AND PROVIDED FOR YOU IN SO MANY  
11 MEANINGFUL WAYS, INCLUDING YOUR SAFETY.

12 WHAT IS ALSO NOTABLE HERE IS THIS CONSPIRACY, THIS  
13 CRIME TO WHICH YOU HAVE PLED GUILTY, IS NOT ONLY LIMITED IN  
14 TIME -- AND IT APPEARS TO BE A TIME WHEN YOU WERE IN YOUR  
15 EARLY 20'S -- BUT THERE IS NO INDICATION, NO EVIDENCE OF ANY  
16 INVOLVEMENT ON YOUR PART IN ANY ACTS OF VIOLENCE. IT APPEARS  
17 TO BE A DISCRETE ROLE WITH RESPECT TO LEADERSHIP OF THIS  
18 PARTICULAR DISTRIBUTION CELL. AND SO WHILE YOU GREW UP IN THE  
19 CARTEL ENVIRONMENT, THE EVENTS THAT BRING YOU HERE TODAY ARE  
20 VERY LIMITED. AND THAT'S IMPORTANT IN ARRIVING AT A JUST AND  
21 FAIR SENTENCE.

22 IT IS ALSO APPARENT THAT THERE ARE MANY, MANY  
23 EQUITIES HERE. YOU ARE WELL-EDUCATED, JUST SHORT OF OBTAINING  
24 A COLLEGE DEGREE. ALL OF THE LETTERS SPEAK VERY WELL OF YOU  
25 AS A PERSON WHO, ASIDE FROM THIS CRIMINAL ACTIVITY, YOU HAVE A

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1       VERY GOOD SIDE. YOU HAVE BEEN A GOOD LOYAL FRIEND, A GOOD  
2 FATHER, GOOD TO YOUR FAMILY. MANY, MANY FRIENDS DESCRIBING  
3 YOU AS SOMEONE WHO IS VERY LIKABLE, HELPFUL, KIND. YOU HAVE  
4 NO UNDERLYING CRIMINAL HISTORY.

5           YOU HAVE A REAL DESIRE TO RETURN TO YOUR FAMILY,  
6 RAISE YOUR CHILDREN. ALL OF THE CONDUCT ATTRIBUTED TO YOU  
7 DEMONSTRATES SIGNIFICANT ACCEPTANCE OF RESPONSIBILITY, GENUINE  
8 REMORSE, AND A SIGNIFICANT POST-OFFENSE REHABILITATION.

9           THESE ARE ENORMOUS MITIGATING FACTORS, AND FOR ALL  
10 OF THESE REASONS I ACCEPT THE JOINT RECOMMENDATION TO DEPART  
11 NINE LEVELS TO EXTRICATE YOU FROM THE MINIMUM MANDATORY. TO  
12 FIND A GUIDELINE RANGE OF 63 TO 78 MONTHS, AND ULTIMATELY I AM  
13 GOING TO IMPOSE A SENTENCE AS IS JOINTLY RECOMMENDED AT 66  
14 MONTHS. I THINK THAT IS THE RIGHT, JUST, AND FAIR SENTENCE  
15 UNDER 3553.

16           IT IS CERTAINLY SUFFICIENT BUT NOT GREATER THAN  
17 NECESSARY TO MEET ALL OF THE 3553 FACTORS, INCLUDING THE NEED  
18 TO PUNISH THE INDIVIDUAL BEFORE THE COURT, DETER YOU AND  
19 OTHERS, PROTECT SOCIETY, PROMOTE RESPECT FOR LAW, AND ACHIEVE  
20 GOALS OF REHABILITATION. AND PROVIDE A MEANINGFUL OPPORTUNITY  
21 FOR YOU TO RECOGNIZE THE WRONG THAT YOU HAVE DONE, BUT TO ALSO  
22 BE FREE FROM CUSTODY AND TO MOVE ON IN A PRODUCTIVE AND LAW  
23 ABIDING MANNER. AND I HAVE EVERY HOPE AND EXPECTATION THAT  
24 YOU CAN DO THAT.

25           FOR ALL OF THESE REASONS IT WOULD BE THE JUDGMENT

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1 AND SENTENCE OF THE COURT THAT YOU BE, AND HEREBY ARE,  
2 SENTENCED TO A TERM OF CUSTODY WITH THE BUREAU OF PRISONS AT  
3 66 MONTHS.

4 THE STATUTORY FINE WOULD BE WAIVED. A SPECIAL  
5 ASSESSMENT OF \$100 WILL BE IMPOSED.

6 YOU HAVE ALSO DEMONSTRATED GENUINE REMORSE AND  
7 ACCEPTANCE OF RESPONSIBILITY THROUGH THE FORFEITURE OF  
8 \$250,000 WHICH HAS BEEN PAID AND WHICH IS FAIRLY  
9 REPRESENTATIVE OF THE DRUG PROCEEDS INVOLVED IN THIS  
10 PARTICULAR CRIME.

11 UNDER ALL OF THESE CIRCUMSTANCES I WOULD DECLINE TO  
12 IMPOSE SUPERVISED RELEASE, AS WELL.

13 BECAUSE YOU HAVE BEEN SENTENCED IN ACCORDANCE WITH  
14 YOUR PLEA AGREEMENT YOU HAVE WAIVED ANY RIGHT TO APPEAL OR TO  
15 LATER COLLATERALLY ATTACK THE SENTENCE AND JUDGMENT.

16 DO YOU UNDERSTAND?

17 **DEFENDANT ZAMBADA-ORTIZ:** YES.

18 **THE COURT:** AND, WITH THAT, HAVE WE ADDRESSED ALL  
19 MATTERS?

20 **MR. VETTIYIL:** YES, WE HAVE JUDGE. THAT'S IT,  
21 JUDGE.

22 **MR. SUTTON:** YOUR HONOR, I WOULD JUST NOTE, AS YOU  
23 DISCUSSED A FORFEITURE. IF YOU COULD GRANT THE FORFEITURE  
24 ORALLY AND INCLUDE IT IN THE JUDGMENT AND CONVICTION. YOUR  
25 HONOR SIGNED AN ORDER OF CRIMINAL FORFEITURE BACK ON

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1 JANUARY 21ST, 2015.

2 AND THE UNITED STATES AT THIS POINT WOULD ALSO MOVE  
3 TO DISMISS THE UNDERLYING INDICTMENT AGAINST THE DEFENDANT  
4 BASED ON THE COURT'S SENTENCE.

5 **THE COURT:** YES. THAT MOTION WOULD BE GRANTED AND  
6 THE FORFEITURE WOULD BE DECLARED AS PART AND PARCEL OF THE  
7 JUDGMENT.

8 I DID SIGN THE FORFEITURE ON JANUARY 21, 2015.

9 THANK YOU.

10 GOOD LUCK TO YOU.

11 **MR. SUTTON:** THANK YOU.

12 **THE COURT:** YOU ARE WELCOME.

13 **DEFENDANT ZAMBADA-ORTIZ:** THANK YOU VERY MUCH.

14

15 \* \* \*

16 I CERTIFY THAT THE FOREGOING IS A CORRECT  
17 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS  
IN THE ABOVE-ENTITLED MATTER.

18 S/LEEANN PENCE 4/16/2018  
19 LEEANN PENCE, OFFICIAL COURT REPORTER DATE  
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